

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

THOMAS MCGARITY,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civil Action No. SA-09-MC-531-XR

Criminal Action No. SA-08-MJ-128-NSN

ORDER

On this day, the Court considered the report and recommendation of the Magistrate Judge (Docket Entry No. 8). The Magistrate Judge recommends that the motion be denied as moot. Movant has not objected to the report and recommendation. Having considered the report, the Court accepts the Magistrate Judge's recommendation and DISMISSES Plaintiff's motion for the return of seized personal property (Docket Entry No. 1).

Background

On June 29, 2009, Magistrate Judge Nancy S. Nowak received a letter from Thomas McGarity, requesting the Court's assistance in securing the return of personal property seized from his home on February 29, 2008. Mr. McGarity states that the property was taken from his home during a search based on an allegation that his son, Neville R. McGarity, was involved in illegal activity. According to the letter, the trial concluded in Florida, and an assistant for the prosecution told Mr. McGarity that the FBI and prosecution would return the items seized from his home. When Mr. McGarity failed to receive the property, he contacted Magistrate Judge Nowak, who had previously authorized the search warrant.

Procedural History

The Court construed Mr. McGarity's letter as a motion for the return of seized personal property. (Mot. for Return of Seized Personal Property (June 29, 2009) [Docket Entry No. 1].) The Magistrate Judge ordered the United States to respond to the motion. (Order Directing Filing of a Response (July 27, 2009) [Docket Entry No. 3].) The United States responded that the property would be received by the FBI and returned to Mr. McGarity by the end of August 2009. (Respondent's Resp. to Mot. (Aug. 14, 2009) [Docket Entry No. 6].) On September 11, 2009, the Magistrate Judge issued an order to Mr. McGarity, directing him to advise the Court if his property was not returned by September 25, 2009. (Order Directing Response by Movant (Sept. 11, 2009) [Docket Entry No. 8].) The Magistrate Judge stated that she would assume that the property was returned if she did not receive a response from Mr. McGarity. He did not respond. The Magistrate Judge, assuming that the property had been returned in accordance with the Respondent's statements and Mr. McGarity not advising her otherwise, issued a report detailing its previous orders and recommended that the Court dismiss the motion as moot. Mr. McGarity has not objected to the motion.

Legal Standard

The Court need only to review unobjected portions of the magistrate judge's report and recommendation to determine whether they are clearly erroneous or contrary to law. *See* 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243, 106 L.Ed.2d 590 (1989). A party may serve and file objections to the order within ten days. FED. R. CIV. P. 72(a), (b)(2).

Analysis

The Magistrate Judge issued her report and recommendation on October 14, 2009. Objections to the report were due on October 28, 2009. *See* FED. R. CIV. P. 72(a), (b)(2) (establishing ten-day deadline to object to magistrate judge's report and recommendation); FED. R. CIV. P. 6(a) (regarding computation of time). There being no objections to the report, the Court reviews the report and recommendation to determine if they are clearly erroneous or contrary to law. Here, the Court designated the Magistrate Judge to hear a matter pending before the Court pursuant to 28 U.S.C. § 636. The orders issued by the Magistrate Judge quickly addressed the issue raised by Mr. McGarity within the authority conferred by statute. The report and recommendation is based upon the Magistrate Judge's previous order that directed Mr. McGarity to notify the Court no later than September 25, 2009, if he had not received the property he sought.

Conclusion

The Court accepts the Magistrate Judge's report and recommendation. Movant's motion to for the return of property is DISMISSED as moot.

It is so ORDERED.

SIGNED this 4th day of November, 2009.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE